

Dear _____ :

This responds to a letter from your authorized representative dated December 28, 2006, requesting rulings on the income, generation-skipping transfer (GST), and gift tax consequences resulting from the proposed combination of several trusts.

You represent the facts to be as follows. Prior to September 25, 1985, Settlor created Trust A, Trust B, Trust C, Trust D, and Trust E (collectively referred to as the Trusts). Beneficiary is the current income beneficiary of all Trusts.

The terms of Trust A and Trust B are identical. Under Article Two of Trust A and Trust B, following the death of the last to die of Settlor and Settlor's Spouse, trust income is to be paid in equal shares to the children of Settlor and Settlor's Spouse. Article Two provides that "if any of the children of the [Settlor] and his said wife shall then be deceased and shall have left issue then surviving, the issue of each such deceased child shall be entitled per stirpes, during life, to the share of the income to which such deceased child would have been entitled if living." Settlor's daughter, Daughter, predeceased Settlor. Daughter was Beneficiary's mother. Trust A and Trust B terminate 21 years after the death of Settlor, Settlor's wife and their children. The last surviving member of such class is still living.

Trust C, Trust D, and Trust E were established for the benefit of Beneficiary. As Beneficiary is currently over the age of 30, pursuant to Article One of each trust, all income from each trust is now distributed to Beneficiary. Article One of each trust also grants the Trustee the discretion to distribute principal to Beneficiary.

With respect to Trust D, Beneficiary has a noncumulative power annually to withdraw up to \$5,000 of trust principal. Article One (c) of Trust C and (d) of Trust D grant Beneficiary a testamentary special power of appointment to appoint to "[Beneficiary's] wife, and to such relatives by blood of [Beneficiary], exclusive of the Donor, and corporations or trustees for charitable or educational use. . . ." Article One(c) of Trust E also grants Beneficiary a testamentary special power of appointment, however the class of permissible appointees is "[Beneficiary's] wife, if living with him at the time of his death, the Donor's relatives by blood (exclusive of the Donor) and corporations or trustees for charitable or educational uses. . . ." In default of the exercise of these powers of appointment, Beneficiary's share is distributable to his then surviving descendants. If Beneficiary has no descendants who survive him, any such unappointed property is distributable to Settlor's then living grandchildren and the issue of any deceased grandchildren.

You proposed to combine Trust A and Trust B into one trust and Trust C, Trust D, and Trust E into a second trust, (together referred to as the Combined Trusts). Court has issued an Order approving the combinations. The Order is subject to the receipt of a favorable private letter ruling by the Internal Revenue Service.

Trust A , Trust B, Trust C, Trust D, and Trust E are governed by the laws of State. State Statute provides that the Court, for cause shown, is authorized to combine separate trusts with substantially similar provisions. If there are different future interests, the trust assets must be valued at the time of the combination and a record must be made of the proportionate interest of each separate trust in the combined fund.

You represent that there have been no additions to Trust A, Trust B, Trust C, Trust D, or Trust E since September 25, 1985.

You have requested the following rulings:

1. The proposed combination of the Trusts into the Combined Trusts will not affect the exempt status of each of the Trusts with respect to the federal GST tax, will not cause the Combined Trusts to be subject to the GST tax, and will not cause any distributions from, or termination of any interests in the Combined Trusts to be subject to the federal GST tax provided there are no additional contributions to the Trusts or the Combined Trusts.
2. The proposed combination of the Trusts and the proportionate allocation of the Trusts' property into the Combined Trusts will not cause any beneficiary to be considered as having made a taxable gift and will not constitute a taxable gift to any beneficiary under § 2501 of the Internal Revenue Code.
3. The proposed combination of the Trusts and the proportionate allocation of the Trusts' property into the Combined Trusts will not result in the realization by the Trusts, the Combined Trusts, or any beneficiary thereof, of any income gain or loss under § 1001.
4. Following the proposed combination of the Trusts and the proportionate allocation of the Trusts' property into the Combined Trusts, the assets of each of the Combined Trusts will, for tax purposes, have the same basis under § 1015 and the same holding period under § 1223 as the assets had at the time of transfer from the Trusts into the Combined Trusts.

GENERATION-SKIPPING TRANSFER TAX ISSUE -- RULING NO. 1

Section 2601 imposes a tax on every GST which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was not made out of corpus added to the trust after September 25, 1985, (or out of income attributable to corpus so added). Section

26.2601-1(b)(1)(ii) provides that any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in settlor's gross estate under § 2038 or 2042 if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2602-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GST tax if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer.

Section 26.2601-1(b)(4)(i)(E), Example 6, considers a situation where, in 1980, Grantor established an irrevocable trust (Trust) for the benefit of Grantor's child, A, and A's issue. In 1983, Grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and Grantor's trust are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust that resulted from the merger will not be subject to the provisions of chapter 13.

In the present case, Trust A, Trust B, Trust C, Trust D, and Trust E were irrevocable on September 25, 1985. You have represented that no additions, actual or constructive, have been made to any of the trusts after that date. Accordingly, pursuant to § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the Trusts are not subject to the GST tax.

The combination of the Trusts into the Combined Trusts is substantially similar to the situation described in Example 6 of § 26.2601-1(b)(4)(i)(E). Court has approved the combination of the Trusts into the Combined Trusts. Each trust will terminate on the same date on which each trust would have terminated prior to the proposed combination. All interests under the Trusts will vest on the same date as prior to the proposed combination. Thus, the combination of Trust A and Trust B, and the combination of Trust C, Trust D, and Trust E, will not result in a shift of any beneficial interest in the Trusts assets to any beneficiary who occupies a generation lower than the person holding the beneficial interests prior to the combination and will not extend the time for vesting of any beneficial interest beyond the period provided for in the Trusts.

Accordingly, based on the facts and representations, and assuming the combination is effective under State law, we conclude that the proposed combination of the Trusts into the Combined Trusts will not affect the exempt status of each of the Trusts with respect to the federal GST tax, will not cause the Combined Trusts to be subject to the GST tax, and will not cause any distributions from, or termination of any interests in the Combined Trusts to be subject to the federal GST tax provided there are no additional contributions to the Trusts or the Combined Trusts.

GIFT TAX ISSUE – RULING NO. 2

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(a) provides that, if a gift is made is property, the value thereof at the date of the gift shall be considered the amount of the gift. Section 2512(b) provides that where property is transferred for less than adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed to be a gift, and is included in computing the amount of gifts made during the calendar year.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides that the gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passes or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

In this case, the dispositive provisions and beneficial interests in the Combined Trusts will be identical to those of Trust A, Trust B, Trust C, Trust D, and Trust E. Therefore, based on the facts and representations, the proposed combination of the Trusts and the proportionate allocation of the Trusts' property into the Combined Trusts

will not cause any beneficiary to be considered as having made a taxable gift and will not constitute a taxable gift to any beneficiary under § 2501.

INCOME TAX ISSUES – RULINGS NO. 3 AND 4

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 over the amount realized. Section 1001(c) provides that, except as otherwise provided, the entire amount of the gain or loss on the sale or exchange of property is recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides, as a general rule, that except as otherwise provided in Subtitle A, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially in either kind or in extent, is treated as income or as loss sustained.

For purposes of § 1001, in an exchange of property, each party to the exchange gives up a property interest in return for a new or additional property interest. Such an exchange of property is a disposition under § 1001(a). See § 1.1001-1 of the regulations.

An exchange of property results in the realization of gain under § 1001 if the properties exchanged are materially different. Cottage Savings Ass'n. v. Commissioner, 499 U.S. 554 (1991). A material difference exists when the exchanged properties embody legal entitlements “different in kind or extent” or if they confer “different rights and powers.” Id. At 565.

Section 1015(b) provides that the basis in property acquired by a transfer in trust is the same as it would be in the hand of the grantor, with adjustments for gain and loss.

Section 1223(2) provides that, in determining the period for which a taxpayer has held property however acquired, there shall be included the period for which such property was held by any other person if under Chapter 1 of the Code such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer's hands as it would have in the hands of such other person.

Based on the information submitted and the representations made in the ruling request, the proposed combination of Trust A and Trust B will not cause the interests of the trust beneficiaries to differ materially. The trust beneficiaries will hold essentially the

same interests before and after the combination. Accordingly, the proposed combination will not cause Trust A, Trust B, the Combined Trust resulting from the combination of Trust A and Trust B, or the beneficiaries of these trusts, to recognize any gain or loss from a sale or other disposition of property under §§ 61 and 1001.

With respect to the combination of Trust C, Trust D, and Trust E, while it is the practice of the Service to answer inquiries from individuals, the Service will decline to rule when appropriate in the interest of sound tax administration or on other grounds, whenever warranted by the facts or circumstances of a particular case. See § 6.02 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 14. As previously discussed with a member of this office, we are declining to provide a ruling under §§ 61 and 1001 with respect to the combination of Trust C, Trust D, and Trust E.

Based on the facts submitted and the representations, we also conclude that following the proposed combination of the Trusts into the Combined Trusts, and the proportionate allocation of the Trusts' property into the Combined Trusts, the assets of each of the Combined Trusts will, for tax purposes, have the same basis under § 1015 and the same holding period under § 1223 as the assets had at the time of transfer from the Trusts into the Combined Trusts.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statements executed by the appropriate parties. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

Lorraine Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes